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General Assembly
Forty-eighth Session

Official Records

100th Meeting
Wednesday, 27 July 1994, 3 p.m.
New York

President: Mr. Insanally ..... (Guyana)

The meeting was called to order at 3.20 p.m.

Agenda item 36 *(continued)*

Law of the sea

(a) Report of the Secretary-General (A/48/950)

(b) Draft resolution (A/48/L.60)

(c) Report of the Fifth Committee (A/48/964)

Mr. Butler (Australia): It is seldom that a generation's work culminates in a moment in which we pause, take stock, and say "it is good, it is done".

In our search for a universal legal order for the world's oceans, we have reached such a moment.

On Friday 29 July 1994, the General Assembly will adopt the "Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982". This Agreement will create the conditions for universal participation in the Law of the Sea Convention, which will enter into force on 16 November this year.

In reflecting on this historic moment, our thanks and tribute extend to the many who have worked towards our common goal over the course of the last generation, commencing in the Seabed Committee of the General Assembly.

In November 1967, Ambassador Arvid Pardo of Malta called for a new legal status for the international seabed on the basis of justice among States and recognition of the finiteness of resources. This action launched into international legal discourse the principle of the common heritage of mankind. Now, 27 years and four negotiating processes later, we are on the verge of establishing an international regime to give life and form to that principle. At the same time, we will have secured a broadly supported system to deal with all the ways in which humanity interacts with the oceans.

The Third United Nations Conference on the Law of the Sea was the greatest single law-making conference ever. Many gave it life. Some of them are not with us today. The late Hamilton Shirley Amerasinghe of Sri Lanka presided wisely over the Conference. He would be pleased today. We Australians also remember gratefully the long-term leader of the Australian delegation, Keith Gabriel Brennan, who also did not live to see the achievement of the goal for which he worked so resolutely and in which he believed so deeply.

We would also like to thank those who have worked in more recent years for this goal: Ambassador Tommy Koh of Singapore, President of the Conference; the former Secretary-General, Mr. Javier Pérez de Cuéllar, and the Secretary-General, Mr. Boutros Boutros-Ghali, both of whom provided the support and resources necessary for us to find a solution. Dr. Carl-August Fleischhauer, Mr. Hans Corell and Mr. Jean-Pierre Levy similarly deserve our recognition.

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Ambassador Satya Nandan, as Under-Secretary-General for Ocean Affairs and the Law of the Sea, and later as representative of Fiji, was pivotal in bringing together the various interest groups and helping forge the agreement before us.

I am proud to announce that Australia has joined the sponsors of this draft resolution, and will sign the Agreement immediately upon its opening for signature. That signals our strong support for this Agreement and the Law of the Sea Convention.

In addition, Australia expects to deposit its instruments of ratification of both the Law of the Sea Convention and the Agreement by mid-October. Thus, Australia will become an original party to the Law of the Sea Convention. We see this as the best way of expressing our good faith in and our commitment to the functioning of the Convention regime. We urge others to join us in supporting the draft resolution and becoming parties to both the Convention and the Agreement as soon as their respective constitutional frameworks allow it. In the meantime we, as a State party to the Convention, will warmly welcome the participation in the new system of those States which may be able to become parties at a later time.

It is typical of multilateral negotiations that no participant will feel entirely satisfied with the results. Such feelings can be amplified when negotiations are conducted under the constraints of an immovable deadline. But it is fair to say that the Agreement before us represents the best possible reflection of the collective will of the international community at this time. We appeal to all States, particularly those that may still have some misgivings, to support the draft resolution and to participate in the new regime together with the great majority of the international community.

There is one question that all of us must ask ourselves: is it in our interest to join in the Convention regime, which is assuming the contours of genuine universality, or is it better to stay outside? We Australians are convinced that a comprehensive analysis of the overall costs and benefits of participation, such as we have undertaken, can lead to only one answer: the interests of each individual State and those of the international community are best served by joining in this system, a system which establishes a stable framework for maritime zones, the protection and preservation of the marine environment, navigation, overflight, marine scientific research, fisheries conservation, assured access to the sea for land-locked States and the establishment of the common heritage principle for the seabed area beyond national jurisdiction, as well as a flexible and innovative system of peaceful dispute settlement.

We look forward to working in partnership with other States in the International Seabed Authority, which will come into existence with the entry into force of the Law of the Sea Convention. Consistent with our active role in the Law of the Sea over the decades, we pledge to contribute towards making the Authority work effectively, efficiently and in a manner consonant with its agreed functions. We further hope that the International Tribunal for the Law of the Sea, an important part of the Convention's dispute-settlement system, will be able to function effectively as soon as is practicable.

This draft resolution will pave the way for a universal legal order for the world's oceans. This in itself has immense meaning. But it will mean more than that. It will underline our common will to supplant arbitrary actions with the rule of law. It will guarantee that, should we disagree from time to time on specific issues, we will all be speaking the same language in seeking peaceful resolution of disputes relating to two thirds of the earth's surface. And it will reaffirm that we, working together in an increasingly multi-polar world, can agree on binding and concrete rules which will touch and improve the lives of all.

Australia commends this draft resolution to the General Assembly.

Mr. Keating (New Zealand): It is with particular personal pleasure that I participate today in this debate, both as a former participant in New Zealand delegations to the United Nations Conference on the Law of the Sea and also as one of those who gathered in Montego Bay in 1982 for the signing ceremony.

After 12 years of waiting, the significance of this occasion should not be underestimated. The 1982 United Nations Convention on the Law of the Sea ranks high up among the list of fundamental multinational legal instruments. It is one of a small group of treaties which can be considered second in importance only to the United Nations Charter itself.

For those of us who participated in the Third United Nations Conference on Law of the Sea, the process through which the Convention was developed was indeed a unique and edifying one. At no other time in history

had a codification exercise as wide-ranging and ambitious been embarked upon. At the outset and during the various lulls when progress seemed elusive, it was difficult to believe that it would succeed in its task. But over the 14 years of negotiations the odds were defied and delicate compromises were reached on highly complex issues by countries with widely varying interests. With the exception of the concerns expressed over Part XI, the compromises reflected in the Convention have held until today.

For New Zealand and our close neighbours in the South Pacific, the Conference in many ways represented a coming of age. The sea is of considerable spiritual importance to our peoples. It is also of major economic significance, given the fisheries resources it provides. Our participation in the Conference and our efforts to ensure that our legitimate interests in the resources of the ocean and the sea were protected led to an enhanced sense of both our national and our regional identity and interests.

One of the most noteworthy aspects of the Conference was the extent to which it cut across the traditional political groupings of countries at the time. Developed and developing countries worked together on matters of common interest in a manner that had never previously been apparent. Tommy Koh, the President of the Conference, noted in this regard that,

> "we succeeded because we did not regard our counterparts in the negotiations as enemies to be conquered. We considered the issues under dispute as common obstacles to be overcome. We worked not only to promote our individual national interests but also in pursuit of our common dream of writing a constitution for the oceans."

Those words of Tommy Koh remind me of the friendships that were struck between delegations during the Conference, and these had positive consequences for cooperation among nations working within this Organization in the years that followed. For that, we here in the United Nations still owe a deep debt of gratitude to the Third Conference on the Law of the Sea.

The sense of disappointment which we, along with other countries, felt when the Convention failed to achieve a consensus and was put to the vote in 1982 have weighed heavily on us these past 12 years. We therefore welcomed very much the initiative in July 1990 of the then-Secretary-General, Mr. Javier Pérez de Cuéllar, in convening the informal consultations aimed at achieving universal participation in the Convention on the Law of the Sea. Today we celebrate the outcome of that initiative: an implementing Agreement which opens the way for general acceptance of the Convention.

I should like to take this opportunity to express our appreciation to the many current and former members of the United Nations Secretariat who worked so hard to keep the flame alive. We are all indebted to them for maintaining the momentum in these efforts to forge consensus on the seabed mining issue.

We also wish to pay tribute to the constructive efforts of the informal group of developing and developed countries, which provided a draft "boat paper", as it was called, as an invaluable basis for the draft resolution which we will adopt today. We were most appreciative of the efforts of members of the group to keep other delegations informed about discussions. The workings of this group were very much in the spirit of the various informal groups established during the Third United Nations Conference on the Law of the Sea. As former Under-Secretary-General for the Law of the Sea Bernardo Zuleta noted:

> "The Conference realized at an early stage that negotiations could not be effectively carried out in formal proceedings, and that because of the large number of participants and the sensitive issues involved, working groups would be needed and would be much more efficient than plenary meetings. Indeed, much of the elaboration process took place in smaller or more informal meetings, but always on an *ad referendum* basis to the larger and more formal groups and always on the basis of consensus."

It seems to me that there are some lessons we could well learn from that process and could continue to apply today.

We are particularly happy to see present today some of the personalities who were so instrumental in bringing the Third United Nations Conference on the Law of the Sea to its success. Some of these individuals have remained actively involved since then in developing the consensus on the implementing Agreement currently before us.

Among so many of them, I would like in particular to express our sincere gratitude to Ambassador Satya Nandan of Fiji. His untiring efforts and enthusiasm

greatly assisted in bringing the quest for a solution to concerns over Part XI to a successful conclusion. It is most fitting therefore that Fiji - the first country to ratify the Convention - is the main sponsor of the draft resolution before us today.

The draft Agreement relating to the Implementation of Part XI represents a major achievement which should facilitate universal acceptance and consolidation of the Convention as a whole. I am pleased to advise the Assembly that New Zealand will sign the Agreement when it opens for signature on Friday, 29 July and, with respect to the Convention itself, in New Zealand procedures directed towards ratification are actively under way.

But we should not mislead ourselves into thinking that the action we are taking today represents the final step in the implementation of the provisions of the Convention. If the Convention is to continue to be relevant it will be important to ensure that all of its provisions are effectively implemented. While the provisions of the Convention provide a sound framework, it has become ever more apparent in recent years that the proper implementation of its provisions in a number of fields requires the elaboration of further, more detailed rules.

In particular, in the wake of the 1992 "Earth summit", the emerging challenges to the law of the sea regime in the environmental field have become more prominent. Many of these challenges have been highlighted in the annual reports on the law of the sea presented by the Secretary-General. We are aware of and welcome the work being pursued under the auspices of the International Convention for the Prevention of Pollution from Ships (MARPOL), the International Maritime Organization (IMO), the London Convention, the International Atomic Energy Agency (IAEA) and other forums to address marine pollution, hazardous wastes and radioactive wastes. These are all areas where a need has been identified to give further elaboration to the relevant legal regimes.

Another key example of the ongoing work to elaborate the law of the sea regime is the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which commenced here in New York in July of last year. At the opening session of the Conference, the New Zealand Minister of Fisheries said:

> "Eleven years after its adoption, the United Nations Convention on the Law of the Sea is, more than ever, regarded as a singular achievement in the codification and development of international law. It is a vital safeguard for all States of the right to use ocean spaces and to benefit from the ocean's resources. But a decade's experience has shown that its provisions for high seas fisheries management have not, in general, been given practical effect".

The Minister added that the high seas Conference was

> "no less than a continuation of the international effort to bring order to the world's oceans in accordance with the Law of the Sea Convention".

If the integrity of the regime on high seas fisheries provided in the Convention is to be maintained, it will be essential to ensure that the Conference develops and reaches agreement on more specific rules designed to provide for the effective implementation of this regime. We urge all delegations to work to ensure that the Conference concludes this important work successfully.

Finally, New Zealand remains committed to working constructively to ensure that we are successful in achieving our long-standing goal of universal adherence to the Law of the Sea Convention. With the adoption of the draft resolution before us, a major step will have been taken towards that goal.

It is our hope that the consensus to be manifested in the adoption of the draft resolution will lead to a significant strengthening of the law of the sea regime in all its aspects.

Mr. Muthaura (Kenya): The 1982 United Nations Convention on the Law of the Sea is an important part of the global system of peace and security of which the Charter of the United Nations is the foundation. The Convention has been recognized as one of the most significant achievements of the United Nations since the Organization's establishment.

At the outset, we would like to thank the Secretary-General for the commendable report (A/48/950) on the outcome of his consultations on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea. The report provides insightful background to the issues and concerns that resulted in the impasse that had persisted since 1982 with respect to the deep seabed mining provisions of the Convention. At the initiative of the

Secretary-General, a series of informal consultations has been conducted since July 1990 with a view to resolving the issues that had been inhibiting certain States from becoming parties to the Convention. Our meeting today is the culmination of those efforts undertaken by the Secretary-General with the wide participation of all interested parties and groups. We are happy with the spirit of pragmatism with which the consultations were conducted. The outcome is indeed substantial and clearly demonstrates the willingness of the international community to overcome differences and obstacles that could hinder the realization of a just and equitable world order based on true solidarity between nations and peoples.

Kenya attaches great importance to the Convention on the Law of the Sea and played an active role in the protracted negotiations leading to its adoption in 1982. Therefore, the decision to participate in any form of negotiations that could lead to, or have the potential of, upsetting the balance which had been delicately and meticulously worked out as a package was not easy for States such as mine, which had already ratified the Convention.

But the situation that developed after 1982 threatened to erode the very delicate balance that had been achieved in the Convention. An overwhelming majority of States had signed the Convention, but less than a third, including only one from the developed industrial world, had ratified it. It had become apparent that a number of changes that had taken place in the political and economic spheres during the intervening period had a bearing on the deep seabed mining provisions of the Convention. Prospects for commercial production of minerals from the deep seabed, for instance, had receded to the next century, contrary to the expectations held when the Convention was being negotiated. The general international economic orientations have also undergone a considerable transformation. As the work of the Preparatory Commission has progressed, there has been a greater understanding of the practical aspects of deep-seabed mining as more information on them have become available. These changes, coupled with the evolution of international relations, have enabled many States, including those that have already ratified the Convention, to broadly accept the approaches to resolving outstanding issues contained in the draft implementation Agreement.

The draft Agreement before us is a significant milestone in our endeavour to preserve the principles enshrined in the Convention. The consensus reached once again underscores the universality and totality of the Convention. As we have stated before, the fundamental premise on which Part XI, relating to the deep-seabed mining regime, was negotiated - the principle that the ocean space and its resources are the common heritage of mankind - is as real today as it was when this process began 25 years ago. Full and faithful expression of this principle will be vital for the future of the Convention, which took so long and so much to negotiate.

We are witnessing the near completion of a journey started many years ago. The international community has invested a great deal of time, energy and resources in this process. We have had to prepare and wait longer than we had expected for the entry into force of this Convention. Now that the entry into force is only three and a half months away, it is the responsibility of all of us to commit ourselves to promoting economic and political policies that fully recognize that the governance and management of the oceans and their resources must be carried out for the benefit of all mankind.

My delegation looks forward to the inaugural meeting on 16 November 1994, when the Convention will come into force, and the subsequent launching of the International Seabed Authority. It is necessary that the secretariat of the Authority to be set up should be provided with sufficient resources to enable it not only to monitor developments in the scientific and technical fields but also to be able to assist in enhancing the capabilities of developing countries in such fields. We believe that this is an essential component if they are to be active partners in the orderly, sustainable development and conservation of the oceans and their resources and the progressive development of international law.

When I had the privilege of addressing this Assembly last year on the item on the law of the sea, I expressed our support for the efforts of the Secretary-General to achieve universal participation in the Convention through informal consultations. My delegation would like to take this opportunity to applaud these efforts resulting in the fruitful conclusion of the Agreement. We would also like to pay tribute to the Under-Secretary-General for Legal Affairs for his excellent work and the entire staff of the Division for Ocean Affairs and the Law of the Sea for their dedication in facilitating the conduct of these consultations.

Let me conclude by expressing our hope that the Convention will now attract the widest possible acceptance and that States will give it their full and concrete support by ratifying or acceding to it at the

earliest possible opportunity. I also have the pleasure to inform the Assembly that Kenya is cosponsoring the draft resolution before us in document A/48/L.60 and that we shall be signing the implementation Agreement contained in the annex thereto.

Mr. Kalpagé (Sri Lanka): I am pleased to announce that Sri Lanka has ratified the United Nations Convention on the Law of the Sea. We consider the entry into force of the Convention on 16 November 1994 as an event of historic global significance.

First, the Convention has now codified complex issues relating to shipping and navigation, fisheries, communications, overflights, resource exploitation and conservation, environmental protection and maritime jurisdiction. This has provided for the first time a comprehensive, integrated basis for a rational and equitable management of the oceans, which cover nearly three fourths of our planet and exert a powerful influence on human life and well-being.

Secondly, the Convention was the culmination of a long, complex process in which often conflicting diverse national interests have been harmonized. This represents a clear victory for the United Nations in the field of international law and is a vindication of faith in multilateral negotiations. This is particularly important at a time when the reality of global interdependence is sometimes denied by myopic interests. That this collective victory can be shared by all, from powerful industrialized to developing countries and from land-locked to archipelagic countries, makes the achievement that much more remarkable.

Thirdly, though not perhaps readily evident, the Convention has had a beneficial impact on international security through its regulation of maritime activity and the dispute-settlement mechanisms it embodies to deal with - if not completely to avert - the clash of competing interests.

The current international climate favouring cooperation over confrontation has facilitated the critical negotiating success of recent months. This has led to the crucial consensus between developed and developing countries and the Agreement on Part XI of the Convention. The initiative of former Secretary-General Javier Pérez de Cuéllar and the continued efforts of Secretary-General Boutros Boutros-Ghali have proved fruitful in securing the participation of major industrialized States in the Convention for achieving universality. The services rendered by the Legal Counsel and the Division for Ocean Affairs and the Law of the Sea have, as always, been effective.

We thank Ambassador Satya Nandan, representative of Fiji and former Under-Secretary-General of the Division for Ocean Affairs and the Law of the Sea, for his introduction of draft resolution A/48/L.60. His long experience in matters of the law of the sea was evident in his very comprehensive introduction. Sri Lanka is pleased to cosponsor this draft resolution and will sign the Agreement immediately after its adoption.

Sri Lanka, an original signatory of the Convention, has been deeply honoured to have been part of this exercise in global cooperation. The pioneer contribution of the late Ambassador Hamilton Shirley Amerasinghe, former Permanent Representative of Sri Lanka and President of the Third United Nations Conference on the Law of the Sea, is part of history and needs little elaboration. However, I should like to read out an extract of a statement on the law of the sea he made to the General Assembly 20 years ago, in 1974, and which has special relevance today:

> "we must not let historians say, in the words of Simon Bolivar, that 'we ploughed the seas'; let us rather by our joint efforts and through the display of mutual understanding, cooperation, tolerance and good will permit history to record that we helped future generations to garner the wealth of the oceans for the benefit of all mankind with special regard to the interests and needs of developing nations and that we bequeathed to them to be held in trust for all time the common heritage of mankind to be shared and enjoyed in a spirit of fraternity and in complete peace and tranquility". (*A/PV.2263, p. 48*)

Sri Lanka has contributed to the development of new legal concepts. The concept of the exclusive economic zone, described as one of the revolutionary features of the Convention, with a profound impact on the conservation and management of ocean resources, emerged at sessions of the Afro-Asian Legal Consultative Committee held in Colombo in 1971.

The entry into force of the Convention this year will mark the climax of long years of patient negotiation. Yet 16 November would mark, in a more important sense, the beginning of a fresh approach to international activity in the oceans. Its success would require collective action of the highest order by all nations in the pursuit of common objectives. The Convention is a blueprint for

collaborative approaches to give practical effect to the Pardo principle that the oceans of this planet constitute "the common heritage of mankind". This would entail working together towards the creation of a just, equitable order in the oceans. In practical terms, it would require the fruits of the new ocean regime to be made accessible to all rather than being confined to those with the means at hand to derive immediate advantage.

Much will depend on the political willingness and, indeed, determination, particularly of the industrialized States, to cooperate in the promotion of international technical and scientific exchanges in marine affairs. The flexibility and the spirit of accommodation demonstrated by the Group of 77 in the search for universality must be matched by a similar commitment and willingness to cooperate on the part of the developed countries, in making these mechanisms a practical reality.

There should also be support to ensure the effective functioning of the mechanisms for the settlement of disputes which would guarantee that peace and justice will prevail in the oceans, with the establishment of the International Tribunal for the Law of the Sea.

Part XI of the Convention offers a solid, viable basis for further cooperation in harnessing ocean resources for the benefit of all humanity. Individual nations thus have an obligation to promote the objectives enshrined in the Convention and to implement national policies and pursue interests within its broad framework. Sri Lanka, for its own part, has given effect to provisions of the Convention well before formal ratification. Sri Lanka has, for example, enacted legislation including the Maritime Zones Law (1976), the Regulation of Foreign Fishing Boats Act (1979) and the Maritime Pollution Prevention Act (1981), in practical support of the Convention.

Sri Lanka has also taken the initiative in the Indian Ocean area to give effect to the resolution on Development of National Marine Science, Technology and Ocean Service Infrastructure adopted at the Law of the Sea Conference. That resolution calls upon developing countries to establish programmes for the promotion of technical cooperation among themselves. It also urged industrialized countries to assist developing countries in the preparation and implementation of their programmes in these fields. In this context, the initiative for the Indian Ocean Marine Affairs Cooperation (IOMAC) is a regional cooperative venture that embodies the principle of cooperation among developed and developing countries in a major ocean area of the planet.

Significantly, at the political level, in an important confidence-building measure, the United Nations Ad Hoc Committee on the Indian Ocean, earlier this month, anticipating the entry into force of the Convention on the Law of the Sea, recognized that it would enhance "the prospects for mutually accommodative measures of cooperation on a regional as well as global basis".

The oceans offer both the promise of peace and development as well as the perils of conflict and confrontation. From the earliest of times, nations have perceived their security and welfare as being bound with the oceans. This has been so not merely in a military sense, but also in the more enduring sense of endeavours to harness the riches of the oceans to advance and sustain human well-being and to promote scientific, technical and cultural exchanges among nations. The recent awareness of maritime ecological factors affecting the future of the planet's life systems has also introduced an added imperative for adopting common approaches to ocean management. The Convention offers a framework within which to promote human development and security through a rational, equitable and sustainable ordering of ocean resources. Sri Lanka pledges its unstinting support for its implementation.

Mr. Tuerk (Austria): The Austrian delegation is very pleased to be able to participate in this resumed forty-eighth session of the United Nations General Assembly, which is once again dealing with the very important agenda item, "Law of the sea". I should like, first of all, to express my delegation's most sincere appreciation for the Secretary-General's report on his consultations on outstanding issues relating to the deep-seabed mining provisions of the United Nations Convention on the Law of the Sea, contained in document A/48/950 of 9 June 1994. We wish to congratulate and thank the present Secretary-General as well as his predecessor for having initiated and successfully concluded these informal consultations, which have resulted in the draft resolution and the draft Agreement, now before this Assembly for adoption, relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

I also wish to express the most sincere gratitude of the Austrian delegation to the former Legal Counsel of the United Nations, Judge Carl-August Fleischhauer, and his successor Under-Secretary-General Hans Corell, for so ably conducting these often quite difficult consultations. Let me also not forget to mention the

many dedicated members of the Secretariat who for many years have laboured before and behind the scenes to move us closer to our present success.

The Austrian delegation is pleased to have been able to make a modest contribution to the endeavours of trying to find generally acceptable solutions to the problems which have so far precluded universal acceptance of the Convention on the Law of the Sea. We are well aware of the fact that the present result could not have been achieved without the most constructive spirit displayed by all the participants in the consultations and without the experienced leadership and guidance of Ambassador Satya Nandan, who can rightly be called "Mr. Law of the Sea".

The General Assembly's adoption of the draft resolution - of which Austria is a sponsor - and the draft Agreement, both contained in document A/48/L.60, will constitute a historic moment in the United Nations efforts, spanning over decades, to codify and progressively develop the law of the sea. It now seems that a universally acceptable legal regime governing all the uses of the oceans is finally within our grasp.

As a prospective member of the European Union - and, we hope, a member by the beginning of next year - Austria wholly subscribes to the statement delivered by the representative of Germany on behalf of the European Union. Permit me to make a few additional observations on behalf of the Austrian delegation.

First of all, let me recall once again that the oceans, covering approximately 70 per cent of the surface of the Earth, have always played a significant role in the development of humanity, particularly as a vast area of communication, but also for satisfying nutritional needs. The great importance of the increasing varieties of uses of the seas has led to a growing tendency of coastal States to assert sovereign rights over maritime areas far beyond their coasts. An important factor in elaborating the 1982 United Nations Convention on the Law of the Sea was the heightened awareness that all the members of the international community, irrespective of their economic development or their geographical location, should be able to benefit from all the uses of the seas, including the exploitation of maritime resources; for all States, whether coastal or land-locked, share a common interest in the oceans and their resources.

Twelve years have now elapsed since the United Nations Convention on the Law of the Sea was adopted. The Convention has rightly been called the greatest milestone yet in the development of the law of the sea. On 16 November of this year it will enter into force, more than a quarter of a century after the endeavours to elaborate a new and comprehensive regime for the oceans were begun. Thus, we have now truly reached a historic juncture.

Since its adoption the Convention, though not yet in force, has already proven its enormous value. The fact that many of its rules have already become customary international law is evidence thereof. The interests of all the members of the international community will, however, best be served by a stable, unquestionable, universally accepted legal regime governing all the uses of this area covering two thirds of our planet.

Over the years Austria has consistently stressed that any regime for the seas must be based upon acceptance by all segments of the international community. We have pointed out time and again that a Law of the Sea Convention which was not adhered to by the major industrialized countries would remain a mere torso and could not realize the aspirations which originally engendered its elaboration: to form a just and equitable legal basis for the uses of the seas by all the members of the international community for their common benefit.

When I had the privilege to speak on behalf of the Austrian delegation in a plenary meeting of the forty-fourth session of the General Assembly on the agenda item "Law of the sea" on 20 November 1989, I pointed out that ways and means would have to be considered to adapt the deep-seabed mining provisions of the Convention in a pragmatic and flexible manner, taking into account, in particular, the changed economic circumstances since these provisions were first drafted. Since that time, furthermore, essential political circumstances have changed. All of these changes are adequately reflected in the draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, now before the Assembly for adoption. The adaptations regarding Part XI of the Convention, which the Austrian delegation has for years considered necessary in order to achieve the goal of universal participation in the Convention, have thus materialized.

The successful conclusion of the consultations of the Secretary-General on Part XI of the Convention has finally brought the international community within reach of the goal of ensuring the establishment of a feasible,

universally acceptable system of deep-seabed mining. It is obvious that in the course of such a difficult negotiating process certain compromises had to be made. There are certainly provisions of the draft Agreement which might have been formulated differently and, from our point of view, in a better way. However, we share the evaluation that the flaws and deficiencies of the seabed mining regime which have so far precluded the adherence of industrialized countries to the Convention will be eliminated by this Agreement.

Let me add that Austria is also particularly pleased by the reference in the preamble of the draft Agreement to the importance of the Convention for the protection and preservation of the marine environment and to the growing concern for the global environment.

In concluding, I wish to recall that Austria has, since the very beginning of the negotiations on a new law of the sea, strongly advocated the principle of the common heritage of mankind. At the same time we have insisted that the system of implementing this principle must not impede its practical application by laying down conditions which would in fact prevent deep-seabed mining. We are all aware that at present commercial exploitation of the deep seabed is a rather distant prospect. Nevertheless, Austria believes that the present draft Agreement constitutes a good basis for administering the common heritage of mankind in a manner truly benefiting the members of the international community. Austria will thus sign this Agreement subject only to ratification. We are also looking forward to making a constructive contribution to the work of the organs of the International Seabed Authority.

Mr. Hage (Canada): Canada is extremely pleased to be able to sign the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. This Agreement is the result of over four years of negotiations held under the aegis of the Secretary-General. Canada was an active participant in these negotiations and is a sponsor of the draft resolution to adopt the Agreement.

The poet Milton said, "They also serve who only stand and wait". Many in this Hall have been waiting for this occasion for some time - in some cases, three decades - to be able to witness what the international community has achieved: agreement on a universal constitution for the oceans in all their aspects. We should like to pay a tribute to those who served this cause over the years, from all parts of the world and from many different countries, both large and small. We are grateful to the Secretary-General and his predecessor for their foresight in convening the meeting which brought about this implementing text. We should also like to pay a tribute to the Legal Counsel, Hans Corell, his predecessor, Mr. Fleischhauer, and Ambassador Nandan in his role as Under-Secretary-General for taking on the task of organizing and chairing the consultations. We also recognize the contribution of a number of outstanding international civil servants - Jean-Pierre Levy and Dolliver Nelson, among others - who over many years have provided consistent assistance and guidance of the highest quality.

The text before us has updated the law of the sea Convention to reflect current world economic realities: both the imperatives of market principles and the fact that economically viable seabed mining will not be possible for many years to come. Most important, the principle of the deep seabed as the common heritage of mankind has been preserved, and the importance of environmental protection has been enhanced. The costs of the Authority are being controlled, especially in the initial years, as institutions, including the Enterprise, will evolve gradually until seabed mining actually begins.

The approval of plans for work is facilitated and will be non-discriminatory. The transfer of technology and production policies have been placed upon a sound commercial basis. The decision-making process has been improved, and cooperative arrangements will provide economic assistance to developing-country land-based producers.

As a strong supporter of the United Nations Convention on the Law of the Sea, Canada is particularly pleased that the successful conclusion of this draft agreement will enable a number of the countries that had concerns about Part XI to ratify the Convention itself, thus creating a truly universal legal regime for the oceans. The Convention is comprehensive, covering virtually every aspect of ocean use from navigation to marine scientific research, and every part of ocean space from territorial waters to the deep seabed beyond the limits of national jurisdiction.

One of the greatest achievements of the law of the sea Convention is the establishment of a framework for the preservation of the marine environment. While not perfect, the framework has been a model for environmental protection in other fields, and must be built upon in the years to come. Another significant

accomplishment is the institution of a 200-mile zone giving coastal States special rights and jurisdiction, as well as imposing obligations, with respect to its living and non-living resources. In the area beyond that zone and the continental shelf, Part XI of the Convention, together with the draft Agreement we shall be signing, regulates the exploitation of the mineral resources of the seabed and subsoil.

In waters beyond 200 miles, the Convention sets forth basic principles for cooperation among States in the conservation and management of the living resources of the high seas, including straddling stocks and highly migratory species. We recognize that these provisions are general; they constitute the basis of a high-seas fishing regime, but one that has to be fleshed out and elaborated. The need for this elaboration has become critical in recent years as fish stocks all over the world have been depleted by overfishing.

It was for that reason that Canada was instrumental in convening the United Nations Conference on Straddling Fish Stocks and Highly Migratory Species. No nation can afford to stand aside and watch this vital food resource being depleted through lack of effective conservation and management. We are part of an ever growing group of nations advocating the adoption of a convention containing provisions that would make the law of the sea Convention itself more effective. In the post-Rio world, we want to see the oceans as a model of sustainable development.

The law of the sea Convention is a monument to international law, the development of the world order and cooperation among States. Yet it is not cast in stone. Like the constitution of a State, it must remain flexible and be interpreted and amended as circumstances change. The draft Agreement that we are to sign attests to the fact that in order to be effective the Convention must be adapted to new realities. Canada is a strong supporter of the Convention, which it helped to draft and from which it has already benefited. Canada hopes to be in a position to ratify the Convention shortly. We look forward to its entry into force and to being able to play a continuing role in the Convention's important institutions.

Mr. Valle (Brazil): The United Nations Convention on the Law of the Sea is undoubtedly a milestone achievement. Its legal impact is profound; its universal validity has become evident. Nearly 12 years ago, the Convention was adopted, establishing a comprehensive and balanced legal regime for the use of the oceans and their resources; in 1982 it was recognized as such by the overwhelming majority of States.

As the only legal instrument intended to govern all forms of human activity in areas covering two thirds of our planet, the Convention stands out as one of the most notable accomplishment in the history of the United Nations. It regulates a wide range of subjects, among many others the rights of States in interior waters, in the territorial sea, in archipelagic waters, in the contiguous zone, in the exclusive economic zone, on the continental shelf, in straits used for international navigation and on the high seas; the definition of baselines and of the outer edge of the continental margin and the delimitation of marine spaces between States with adjacent or opposite coasts; innocent passage, transit passage and freedom of navigation; the rights of land-locked and geographically disadvantaged States; the conservation and management of living resources; the protection and preservation of the marine environment; marine scientific research and the development and transfer of marine technology; and the settlement of disputes.

The Convention also establishes the regime for the area of the seabed and ocean floor beyond the limits of national jurisdiction and its resources, which are the common heritage of mankind.

Having ratified the Convention in 1988, Brazil is clearly committed to its purposes and principles and to its universal acceptance. A remarkable and comprehensive instrument like the Convention requires that the international community as a whole fully endorse its regime. Although forming an integral part of the Convention, the provisions of Part XI remained an obstacle to ratification or accession, particularly by developed States.

In order to find a solution to the problems related to the lack of universal acceptance of the Convention, in 1990 Secretary-General Javier Pérez de Cuéllar started a process of consultations, which gained momentum and which were intensified under Secretary-General Boutros Boutros-Ghali. A three-phase process can be identified in the light of the report of the Secretary-General: first, identification of the issues of concern; secondly, the drafting of specific language for the issues of concern, for which the information note of the Secretariat and the "boat paper" from some interested delegations were instrumental; and, lastly, the circulation of the draft agreement on the implementation of Part XI.

Brazil considers the draft agreement as a ingenious way to accommodate concerns of some delegations while ensuring the universality of the Convention. It seeks to establish a number of rules for the implementation of the provisions of Part XI and its related annexes and does not constitute a formal amendment to the text of the Convention. To interpret it otherwise would run counter to the need to preserve the integrity of the Convention, an objective to which my delegation attaches particular importance.

The word "implementation" was not chosen by accident. It reflects an awareness of the difficulties of amending the text of the Convention, which would pose legal as well as conceptual problems for many States, in particular those that have ratified the Convention.

The principle of common heritage of mankind translates into an institutional framework in which all States parties to the Convention are represented and which allows them to have a say in the rational management of the resources of the Area. Though a full-scale institutional framework for the period between the entry into force of the Convention and the first commercially viable operation would be unnecessary, Brazil believes that the main institutions envisaged by the Convention should be established and their functions clearly defined upon entry into force, an idea that is incorporated into the draft agreement.

The question of decision-making, one on which, in the course of the informal consultations, painstaking discussions were held, was satisfactorily settled through the provision that guarantees the necessary balance among the various groups of interests, steering clear of the establishment of a system of voting that could have jeopardized the process of decision-making of the Authority.

Brazil is cosponsoring the draft resolution before us, whose provisions will enable the 1982 Convention to become universally acceptable and therefore ensuring the full establishment of a balanced and comprehensive international seabed regime.

Brazil will be signing the Agreement on the implementation of Part XI in this resumed session of the General Assembly. Consistent with our domestic legal requirements, our consent to be bound by this Agreement will be expressed in accordance with article 4, paragraph 3 (b) - signature subject to ratification, and we will not apply it provisionally.

On 16 November 1994, in Jamaica, a sister country of the Latin American and Caribbean Group of States, the first meeting of the International Seabed Authority will be convened. Brazil will take pride in sharing this historic moment.

The results of four years of complex and intense negotiations are before the General Assembly. At the time the informal consultations were convened, there were some who felt that our main goal - the universalization of the Convention - was too ambitious and not attainable. We proved them wrong, and now the international community is in possession of a carefully crafted, balanced and comprehensive legal instrument that, we hope, will further strengthen the United Nations Convention on the Law of the Sea.

Mr. Yoo (Republic of Korea): The international community has recently witnessed the successful conclusion of the four-year long informal consultations on the law of the sea. On behalf of the Government of the Republic of Korea, I would like to express congratulations to those individuals who have been involved in the process. In particular, I would like to express my appreciation to Secretary-General Boutros Boutros-Ghali for his steadfast devotion to forging a new historic document in the area of the law of the sea. I also wish to express my thanks to the Legal Counsel, Mr. Hans Corell, whose dedicated efforts provided an invaluable contribution during the final stages of the negotiations. Last, but not least, I would like to pay tribute to the former Secretary-General, Mr. Javier Pérez de Cuéllar, who played an instrumental role in the establishment of informal consultations to achieve universal participation in the United Nations Convention on the Law of the Sea, and the former Legal Counsel, Mr. Carl-August Fleischhauer, who capably conducted the consultations on behalf of the Secretary-General before assuming his new post in the International Court of Justice.

With the conclusion of the Third United Nations Conference on the Law of the Sea in 1982, the United Nations Convention on the Law of the Sea was created. One of the main goals of this monumental maritime legal document was the establishment of a legal regime which governed the exploitation of the mineral resources of the deep seabed beyond the zones of national jurisdiction. Following the Convention's adoption, however, several nations voiced strong opposition to its deep seabed regime. Such disagreement among nations created shaky ground for the deep seabed regime as it stands in Part XI

and relevant annexes of the Convention, and resulted in uncertainty for the regime from its inception. Despite its noble ambitions to strive for the benefit of mankind, the Convention's seabed system had been perceived as a stumbling-block to the earlier entry into force of the Convention.

Given the controversy which has surrounded the deep-seabed system, we are extremely pleased to see that the major differences have been resolved through the recent negotiations and that the universal application of the Convention will soon be at hand.

The Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, which is the outcome of the negotiations, along with the relevant provisions of the Convention itself, will serve as the guiding rules for future deep-seabed mining.

My Government firmly believes in the high value of the Agreement, primarily because of its realistic reflection of the new political and economic conditions which have emerged since the Convention's adoption in 1982.

With the simultaneous application of the Convention and the Agreement from 16 November this year, we will embark upon a new era of a universally recognized legal order for the oceans. Given the ever-increasing role of the oceans in all aspects of human life, the establishment of a universal legal regime as envisioned by the Convention has never been more important for a truly stable and peaceful world.

The Republic of Korea, one of the 159 signatories to the Convention, has actively participated in the work of the Preparatory Commission as well as the informal consultations. Since the mid-1980s, the Korean Government has carried out pioneer activities in the international seabed area of the north-east Pacific, as set forth in paragraph 1 (b) of resolution II. Upon the completion of its pioneer activities, the Korean Government applied for pioneer investor status last January, and the processing of its application is expected to be completed during the twelfth resumed session of the Preparatory Commission in August. The Republic of Korea, as a strong supporter of the stable legal order embodied in the Convention and a potential registered pioneer investor, is fully committed to the Agreement as well as the Convention.

The Government of the Republic of Korea is expediting the preparations for the ratification of the Convention. This process is well under way and is likely to be completed within a few months.

As one of the sponsors of the draft resolution on the Agreement, the Korean Government, ready to apply the Agreement provisionally pending its entry into force, will sign it as soon as the domestic processes are completed.

In closing, I would like to reiterate that my Government is well prepared to lend its full support for the stabilization of the international legal regime for the oceans, including the deep seabed mining system.

Mr. Anderson (United Kingdom): The representative of Germany spoken earlier today on behalf of the European Union. My delegation fully endorses his statement, and it is my honour to add some remarks on behalf of the United Kingdom.

As an island State with numerous overseas interests, the United Kingdom has always followed closely all aspects of the oceans, including therefore the law of the sea. Historically, in former times, the United Kingdom helped to shape those rules of law. But in the second half of the present century, it is this Organization - the United Nations - which has made the significant achievements in this field. The First Conference on the Law of the Sea in 1958 resulted in the adoption of four Conventions which the United Kingdom was able to ratify. The Third Conference, from 1973 to 1982, adopted what we regarded as a most valuable, comprehensive Convention on all aspects of the law of the sea.

It was therefore only after the most careful consideration that the United Kingdom decided that it was unable to sign the Convention, both in 1982 at Montego Bay and again in 1984 at the end of the period. The reasons for this reluctant decision were explained to Parliament in terms of Part XI. The costs of the system were too high; the arrangements for the Enterprise were also too expensive and bureaucratic. There was discrimination against the private sector. The arrangements for decision-making did not take sufficient account of the interests of industrialized countries. Mandatory transfer of technology was unacceptable. The concept of limiting production was contrary to the principles of the free market. The financial terms for contractors were considered to be too stiff. And so, in 1984, the decision of the Government as announced to Parliament ended with the hope that there could be

further negotiations on these issues with a view to achieving a universally acceptable Convention.

It followed naturally from that statement in 1984 that the British Government welcomed the initiative taken by the then Secretary-General Pérez de Cuéllar to hold consultations in 1990 about the obstacles preventing universal participation in the Convention. My Government would like at this time to pay a tribute to the former Secretary-General for this initiative, as well as to the Under-Secretary-General at that time, Mr. Satya Nandan, who was also very much involved in organizing the consultations. We were also pleased that the present Secretary-General, Mr. Boutros-Ghali, decided to continue the consultations and we are grateful for the efforts of Legal Counsel Fleischhauer, Legal Counsel Corell and his colleagues Jean-Pierre Levy, Oliver Nelson and others, for their skills and the contributions they have made during the final stages of the consultations. The Secretary-General's report to this resumed Assembly on the outcome of his consultations concludes that there now exists a basis for reaching general agreement on the outstanding issues to do with Part XI.

The draft Agreement before the Assembly addresses the specific objections voiced by the United Kingdom in 1984. The Agreement puts forward solutions to these objections which we find generally acceptable. On 20 July, a week ago today, the Parliamentary Under-Secretary for Foreign and Commonwealth Affairs, Mr. Lennox Boyd, informed our Parliament that the United Kingdom had decided to sign the Agreement following its adoption and that we would also proceed at the appropriate time to ratify the Agreement and to accede to the Convention when the necessary procedures had been completed. The United Kingdom will apply the Agreement provisionally in accordance with article 7, paragraphs 1 (b), 2 and 3, with effect from 16 November.

The effect of the new Agreement, when it comes to be applied provisionally and when later it enters into force, will be to modify the effect of Part XI of the Convention. Although it does not textually amend Part XI, as the representative of Brazil just pointed out, there is still no doubt that the provisions which, in the words of the Agreement, are to apply supersede in effect those which are said by the Agreement not to apply. It will therefore be necessary for Governments, international organizations, including the International Seabed Authority, and international courts and tribunals - in fact, for all those concerned with international maritime affairs - to apply Part XI in the future in accordance with the terms of the new Agreement. In particular, it will be necessary for the Preparatory Commission to take account of the new Agreement in completing its report next week.

The adoption of this Agreement does not mean, of course, that all outstanding issues have now been totally resolved. In particular, the broad principles regarding costs to States Parties, contained in section 1 of the annex to the Agreement, remain to be worked out in practice in the new Authority and in the Fifth Committee of this Assembly. With so many other demands on the resources of the United Nations and its Member States - demands of a pressing humanitarian nature, including peace-keeping operations - we must be mindful of the need for economy. It remains our view that, in order to avoid unnecessary expense and to take account of the low level of activity and interest on the part of the deep seabed mining industry for the foreseeable future, it would be inappropriate to create a large Authority at this stage. The precise size of the Authority and the rate of growth remain matters for discussion in the appropriate organs. The United Kingdom will work with others of similar disposition to keep down the overall costs of the new institutions arising from the Convention.

Another outstanding issue concerns the transitional arrangements for certain of the registered pioneer investors. We trust this issue will be resolved in the Preparatory Commission next week in the light of the terms of the Agreement and bearing in mind that commercial production is unlikely to start for many years.

My delegation looks forward to the situation whereby the great majority of States in the world are bound by the Convention on the Law of the Sea, which will then stand alongside other major achievements of this Organization in the codification and progressive development of international law, such as the Conventions on diplomatic relations and the law of treaties. A universally accepted law of the sea Convention will greatly strengthen international peace and security, the maintenance of which remains the fundamental task of this Organization.

During the present century, certain years stand out in the history of the law of the sea: 1930, when the League of Nations held a Conference on the breadth of territorial waters; 1958 saw the first Law of the Sea Conference; 1967, as was mentioned by the Ambassador of Malta, saw the proposal of the concept of the common heritage of mankind; 1974 - when 20 years ago today

many here were in Caracas at the very influential session of the Conference; 1982 saw the adoption of the law of the sea Convention. The adoption in coming days of the draft Agreement relating to the Implementation of Part XI can be seen as another milestone in this history of the development of the law of the sea. It marks the culmination of a process of legislation which has occupied the international community during the greater part of this century, a process in which many present today have participated over many years.

It is to be hoped that the 1982 Convention, as strengthened by the draft Agreement we hope will be adopted shortly, will together achieve universal participation. In that way, the international community will be able to enter the twenty-first century on a sound legal basis as regards the major part of the Earth - its seas and oceans.

Accordingly, my delegation has cosponsored the draft resolution so ably introduced by the Ambassador of Fiji this morning, and would like to urge other delegations to support it.

Mr. Balzan (Malta): Today we mark a turning-point in the history of the United Nations, an Organization set up nearly 50 years ago with the aim of achieving international peace and security. Since the very concept of security has been modified and is no longer limited to purely military considerations, the role the United Nations can and is playing becomes all the more relevant.

At the basis of security lies the notion of protecting the equal sovereignty of, and the sharing of common principles among, the diverse States within the international community. The continued evolution and enhancement of these common concepts forms the fabric of the international norms and standards that guide lawful international behaviour.

Nearly 30 years ago Ambassador Arvid Pardo, then Permanent Representative of Malta to the United Nations, addressed a distinguished audience such as this and launched a concept so universal in nature that it is no longer confined simply to legal and diplomatic circles but has moved into everyday use.

On 17 August 1967 Ambassador Arvid Pardo, on behalf of the Government of Malta, submitted a memorandum to the Secretary-General requesting him to include in the agenda of the twenty-second session of the General Assembly an item entitled: "Examination of the question of the reservation exclusively for peaceful purposes of the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind".

The introduction of this concept was to become a fundamental block in the building of the United Nations Convention on the Law of the Sea, which was described by a former Secretary-General as the most important achievement of the United Nations system since the San Francisco Conference.

The principle of the common heritage of mankind was first put forward by Malta, a strategically important territory surrounded by the sea. Our historical and economic development, like that of many other States, is witness to the fact that the waters of this Earth continue to be not only a medium of communication in a practical and physical sense, but also, if not more importantly, a means of communication and understanding among peoples in a much broader conceptual framework.

Just as the seas since time immemorial have been navigated for conflictual purposes, so too the path to their recognition as a common heritage has been fraught with difficulty. It is in the nature of the evolution of international law that national interests differ. Yet, as a result of goodwill and laborious negotiations, compromises can be sought and achieved without sacrificing universal principles.

The adoption of the draft resolution and draft Agreement relating to the Implementation of Part XI of the Convention is the fruit of such a lengthy process of negotiation. We have good reason to be pleased at this outcome, thanks to which we can now witness the United Nations Convention on the Law of the Sea acquiring universal acceptance. This is no mean feat, and one must at this stage express gratitude to all those who have contributed towards the building of the consensus which is being registered today. The negotiations were complex and difficult, demanding flexibility from all to reach a solution that satisfies the legitimate concerns of all States that will be parties to this Agreement.

My delegation cannot but register its extreme satisfaction that the concept of the common heritage of mankind, as applicable to the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, was not only retained but was reaffirmed

throughout negotiations and in the text of the Agreement itself.

The very concept of the common heritage of mankind, revolutionary when first launched, remains an appealing one even today. It is a concept that brings contemporary notions of space and time together. More importantly, it provides an inherent link to the past as well as an intrinsic passage to the future, thus providing a new dynamic which helps overcome a static world view. The notion of a heritage provides the logic necessary for wider parameters in the assessment of the here and now. It has stimulated a world vision that no longer concentrates on present- day situations but transcends selfish concerns and looks to what lies beyond our immediate human condition.

The vision provided by such an initiative has expanded our conceptual parameters. More importantly, it has provided the impetus for a number of similar initiatives in other areas. The exploitation and use of outer space for peaceful purposes was recognized by the United Nations General Assembly as being "in the common interest of mankind". The characterization of climate change as the "common concern of mankind" was yet another initiative undertaken by Malta to maintain the momentum for such a bold principle. These are but two examples of the importance of, and support for, this future-oriented vision.

Reference to the concept of common heritage presupposes an underlying responsibility towards future generations. We have inherited a planet, and we are responsible for preserving it for our children.

In its milestone 1987 report, "Our Common Future", the World Commission on Environment and Development, known as the Brundtland Commission, emphasized the importance of environmental protection in the pursuit of sustainable development. The coining of such a term marked the reflection of the idea of shared responsibility and equality within and between generations. Sustainable development involves meeting the needs of the present without compromising the ability of future generations to meet their own needs.

The United Nations Conference on Environment and Development was convened in Rio in 1992 with the aim of spelling out an agenda to be implemented by national Governments in the interest of present and future generations. The linkage of that important Conference with the subject-matter on which we are deliberating today can be noted in the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, which declares that States Parties to this Agreement are

> "Mindful of the importance of the Convention for the protection and preservation of the marine environment and of the growing concern for the global environment".

The inherent responsibility towards future generations which is the twin concept to the notion of a common heritage of mankind is thus enhanced each and every time an aspect of this notion acquires universal acceptance.

What Malta launched in 1967 was the beginning of a far-sighted process, which should by no means end today. It marked the setting of a course that requires constant vigilance and periodic rejuvenation by means of new insights. These new insights necessarily demand a reassessment of the institutional frameworks which are to cater to contemporary needs.

It was in this spirit that the Deputy Prime Minister and Minister of Foreign Affairs of Malta, Professor Guido de Marco, during his presidency of the forty-fifth session of the United Nations General Assembly, pointed to the need for a "regeneration" of our Organization. He launched the concept of a second-generation United Nations, pointing to the changes needed to better reflect present-day realities.

During a statement delivered to the Economic and Social Council on 12 July 1991, Mr. de Marco stated:

> "Drawing lessons from the past does not make us fear the future. On the contrary, it should inspire us to continue strengthening the role of the United Nations in ensuring future generations the solidarity of a new world order where peace in freedom and economic development in social justice finally become the common heritage of mankind".

With this in mind, Mr. de Marco, as President of the General Assembly, first proposed the idea of a new and added role for the Trusteeship Council as a culmination and the logical conclusion of the common heritage concept. In his own words:

> "The Trusteeship Council should hold in trust for humanity areas affecting its common concerns and its common heritage. It could have a monitoring

function on the protection of the environment, extra-territorial zones, climate and, of paramount importance, the rights of future generations. These we hold in trust for humanity, and the Trusteeship Council can be depository thereof".

My delegation's active participation in the informal consultations of the Secretary-General is testimony of Malta's commitment for the law of the sea.

My delegation cannot but welcome today's meetings. They constitute the coming to fruition of a notion close to our hearts and ever-present in our minds. It is a step towards the achievement of a more peaceful and secure world, one which not only cares for its present condition but has a pervasive consciousness of what lies ahead for future generations.

Mr. Rattray (Jamaica): This resumption of the forty-eighth session of the General Assembly is of historic significance. It serves to confirm the fundamental role of the United Nations in finding solutions to questions of universal concern, and it serves to confirm that the principles of the common heritage of mankind on which Part XI of the United Nations Convention on the Law of the Sea is based must continue to serve all times and all ages.

Twelve years ago a truly historic landmark in the history of international relations was achieved when the United Nations Convention on the Law of the Sea was adopted. For when 161 nations assembled in Montego Bay, Jamaica, on 10 December 1982 to adopt the United Nations Convention on the Law of the Sea it represented in a true sense a rendezvous with history. Never before had such a comprehensive effort been made to deal with all aspects of ocean space in a single convention. Never before had there been such universality of participation in the negotiation of a truly global convention. Never before had the challenge of a new international economic order been faced not merely by rhetoric but by practical and pragmatic solutions. And yet, in spite of the unprecedented 159 signatories to the Convention and now over 60 ratifications, the challenge to universality has continued to face us. Despite the overwhelming support for the Convention, we have not lost sight of the fact that a convention which is designed for mankind as a whole must secure the universal participation of mankind.

Our continued search for universality has in the past four years centred around a dialogue under the auspices of the Secretary-General aimed at addressing issues of concern to some States which have found difficulties with certain aspects of Part XI of the Convention. But that search for universality has always recognized that the integrity of the Convention as a whole must be maintained and that even the fundamental political, economic and social changes within the international community have in no way invalidated the fundamental basis of the Convention or the principles of the common heritage of mankind on which Part XI of the Convention is based. The results of our efforts under the auspices of the Secretary-General's consultations have now been brought to fruition in the draft resolution and draft Agreement relating to the Implementation of Part XI which have been presented to the Assembly today.

Mr. Ouedraogo (Burkina Faso), Vice-President, took the Chair.

It is significant that the fundamental premise on which the Convention was negotiated, namely, its unified character, has been expressly reaffirmed. It is therefore inadmissible to apply selectively the provisions of the Convention. The implementation Agreement which is to be adopted is essentially concerned with the manner of the implementation of the Convention and does not in any way derogate from the statement of principle that

> "the seabed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the Area, are the common heritage of mankind". *(United Nations Convention on the Law of the Sea, article 136)*

We welcome and support the adoption of the draft resolution and implementation Agreement because it provides an opportunity to secure true universality in the application of the United Nations Convention on the Law of the Sea. And it devises mechanisms for securing that universality even in advance of ratification by allowing for provisional application of Part XI of the Convention.

The evolutionary approach adopted in the implementation of the regime for the common heritage of mankind recognizes the need for a cost-effective Authority which takes into account the functional needs of the organs and subsidiary bodies of the Authority to discharge effectively their respective responsibilities at various stages of the development of activities in the Area. We regard this question of cost-effectiveness and cost-efficiency as relevant not only to the International Seabed Authority but to all organs within the United Nations system. Any attempt to single out the Authority

as an object of cost minimization by itself would be discriminatory. We subscribe to the view that structure must follow function and that our legitimate concern for cost minimization must not be carried to such lengths as to deprive the Authority both quantitatively and qualitatively of the resources necessary to carry out its functions from time to time. For to do so would be a certain recipe for paralysing the realization of the common heritage of mankind. We must not lose sight of our vision of the common heritage of mankind as we forge the links which will secure universal participation in the Convention. We believe that the draft resolution and the implementation Agreement have struck the proper balance.

Let us recall that the common heritage of mankind is not subject to appropriation, is reserved exclusively for peaceful purposes and is to be developed, and the benefits distributed, with special regard to the interests and the needs of developing countries. The implementation Agreement must therefore be seen in this context, and it must have the capacity to adjust itself so as to address creatively the ongoing and contemporary needs of mankind as a whole.

The Jamaican delegation believes that the draft resolution and the implementation Agreement provide both a challenge and an opportunity to create a greater interdependence and indivisibility in the uses of ocean space and to preserve the fundamental basis of the package deal represented by the Convention.

Jamaica was among the first States to ratify the Convention and we intend to be among the first to sign the implementation Agreement, immediately upon its opening for signature.

It is with great pleasure that Jamaica cosponsors the draft resolution contained in document A/48/L.60. We commend it to all delegations, so that together we can look forward to the entry into force of the Convention on 16 November 1994 and to the inaugural meeting of the International Seabed Authority in Jamaica on that date.

Mr. Cardenas (Argentina) (interpretation from Spanish): I take great satisfaction in speaking on behalf of the Argentine Republic, during this resumption of the General Assembly's forty-eighth session, on the question of the law of the sea.

I say "satisfaction" because the purpose of these meetings is to complete the last stage of the long and difficult journey that began with the welcome initiative taken by the Secretary-General in 1990 in embarking on informal consultations on the Convention on the Law of the Sea. This initiative, it will be recalled, was designed to try to solve the outstanding problems, in order to achieve universal participation in the United Nations Convention on the Law of the Sea.

It was clear then, and is even clearer today, that if the Convention on the Law of the Sea were ratified by only a part of the international community, it would become a fragile instrument, incapable of establishing the stable world order in the marine environment that is indispensable if relations of cooperation and friendship between States are to be maintained and developed.

That aspiration to universality, together with the profound changes that have taken place on the international political and economic scene since the adoption of the Convention on the Law of the Sea, have made it necessary to reconsider the Convention's regime with respect to the exploitation of the seabed.

The outlook for mining the seabed was no longer the same. The economic and technical forecasts, which in the 1970s considered commercial exploitation imminent, now tended to put it off until the next century.

In this new political and economic context the informal consultations were begun. Argentina, convinced that Part XI of the Convention needed to be brought into line with the new international reality and that the obstacles impeding the participation of many States should be removed, took an active part in all phases of those consultations.

The upcoming entry into force of the Convention on 16 November 1994 has only strengthened this conviction by injecting a degree of urgency into the need to universalize the Convention on the Law of the Sea. In resolution 48/28 of 9 December 1993 the General Assembly itself recognized the historic significance of the Convention as an important contribution to the maintenance of peace, to justice and to progress for all the peoples of the world, and invited all States to renew their efforts to facilitate universal participation in the Convention.

Four years after the start of those informal consultations, we wish to express, first of all, our thanks to the Secretary-General for his wise initiative and for his report on the consultations, which gives a full account of their evolution in their various phases.

We also wish to express our satisfaction with the results achieved, which are manifested in the draft resolution and draft Agreement relating to the Implementation of Part XI of the Convention now before us for our consideration.

The provisions of the draft Agreement preserve the unified character of the Convention and the fundamental principle that the resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind.

At the same time, these provisions permit the regime of Part XI to be implemented in keeping with the new international climate, while also taking into account the trends towards market-oriented systems. Its content was the subject of long, difficult and impassioned negotiations, and the draft is based on broad consensus.

For all these reasons my Government, which has co-sponsored the draft resolution, also intends to sign the draft Agreement, subject to ratification, as soon as it is open for signature. In order to avoid the risks and difficulties of having two regimes in place, my country will also, along with signing the Agreement, agree to its provisional implementation as of 16 November 1994.

We trust that the great majority of States present here will be prepared to join us in this course of action, and we urge them to do so. In this way, only a few months after its entry into force the way will be clear for universal accession to the Convention on the Law of the Sea.

More than 10 years ago the Secretary-General said the Convention on the Law of the Sea could be considered "perhaps the most important legal instrument of the century". We are very close to making that statement come true.

Mr. Halkiopoulos (Greece) *(interpretation from French):* I am speaking in my dual capacity as representative of Greece and current Chairman of Special Commission 4 of the Preparatory Commission for the Law of the Sea. That Special Commission was entrusted with setting up the mechanism for the functioning of the International Tribunal for the Law of the Sea.

My country's positions concerning the draft resolution and Agreement were fully expressed this morning in the statement delivered by the German Presidency of the European Union, and there is no need for me to cover that ground again. However, at the end of that statement the German delegation appealed for the prompt and full establishment of the Tribunal for the Law of the Sea, and I feel duty-bound to associate myself with that appeal and to endorse it strongly.

In fact, the system for the functioning of the Convention, which is provided for in the Convention on the Law of the Sea, requires a Tribunal. Of course, as we all know, the system for the settlement of disputes under the Convention of the Law of the Sea has a great many facets and embraces a number of various bodies. But the Tribunal for the Law of the Sea is an irreplaceable body.

At the same time, in order to function viably and properly the Tribunal needs to meet the requirement of universality. In fact, according to the terms of the Convention itself, not only should all geographical groupings be represented there, but also all systems of law. For this reason we feel that a process, analogous to the one that is just about to be adopted on the substance of Part XI, should in some way be envisaged, and I wonder whether it could not already have been envisaged. But perhaps one should not try to do too many things at once.

However, it is now high time to complete what we have done and what we are now doing at this time, and we can do so in this way: through a system that would offer all Member States, on a provisional basis, the same possibilities provided by the Agreement we are now in the process of adopting. That would make it possible for Member States to participate in the setting up of the Tribunal and for representation to be universal. It would also lend effectiveness to the arrangement to be adopted with respect to Part XI. Only in this way would we attain what we might describe as a consensus in the jurisdictional area, a consensus that would be in line with the consensus that seems to be emerging in this Hall, where we are in the process of adopting an Agreement relating to the Implementation of Part XI.

Allow me to conclude by quoting a passage of the report in which President Amerasinghe introduced the first negotiating paper for the setting up of a dispute-settlement system.

The late President Amerasinghe, in the report in which he presented the negotiating text, stated:

spoke in English

"When presenting the first draft negotiating text on the settlement of disputes, the President of the Third United Nations Conference on the Law of the Sea recorded that, to ensure that the composition of the law of the sea Tribunal takes into account the consensus arrived at in reaching the law of the sea Convention by the various groups participating in the consensus, an attempt has been made to formulate a method of selection of the judges of the Tribunal reflecting this consensus. It is only in this way that regional groups could feel a real sense of participation in its functions and thus ensure their willingness to accept it."

spoke in French

Of course, as we all know, the Convention was not adopted by consensus as had been anticipated by the President when he wrote that. But in view of the fact that a consensus does seem to be on the horizon at the present time, I believe that President Amerasinghe's words take on a fresh significance which is fully in keeping with the importance of this meeting, and that what is important is to have a body for the settlement of disputes that is capable of meeting the requirement of universality and represent consensus in the area of jurisdiction.

Mr. Ansari (India): The United Nations Convention on the Law of the Sea is an unprecedented attempt by the international community to promote the peaceful use of the seas and oceans, the equitable and sustainable utilization of their resources, and the protection and preservation of the marine environment. What makes the United Nations Convention on the Law of the Sea a milestone in global treaty-making is not only its extensive scope and the integrated approach it takes to all questions of management and use of the oceans, but also, perhaps most importantly, the declaration that the area of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, as well as their resources, are the common heritage of mankind. The body empowered to administer the common heritage of mankind and to regulate its exploration and exploitation for the benefit of mankind as a whole will be the new International Seabed Authority, a unique institution, open to membership by all States as well as international organizations and other entities meeting specific criteria.

The Convention was signed by a record number of nations on the day it was opened for signature in Montego Bay, Jamaica, on 10 December 1982, nearly 12 years ago. India, too, signed the Convention in 1982 and has since then taken various measures to give effect to the provisions of the Convention and resolution II governing preparatory investment in pioneering activities relating to polymetallic nodules.

The entry into force of the Convention later this year, on 16 November 1994, will be a historic occasion and will provide an opportunity to all countries actively to participate in and benefit from the resources of the seas and oceans.

Our desire to secure universal participation in the Convention motivated us to participate actively in the informal consultations organized by the Secretary-General during the period 1990-1994. These consultations, pertaining essentially to Part XI, were, no doubt, protracted, and at times difficult. It is, however, to the credit of all of us that we did not lose heart, and continued in a spirit of compromise and understanding of each others' views. The Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea is a concrete and successful outcome of the Secretary-General's initiative. This is yet another milestone and demonstrates that, given good will and understanding on all sides, difficult problems can be overcome to the satisfaction of all nations. We believe that the objective of achieving universal adherence to the Convention will no longer be a distant goal, and it should be achieved within the time frame set out in the Agreement relating to Implementation of Part XI. It is significant that the Convention and the Agreement constitute a single document to be interpreted and applied together.

India believes that the codification of the law of the sea achieved in this Convention, and the constructive approach envisaged in the Agreement, will contribute to the strengthening of cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote economic and social advancement for all people of the world.

My delegation hopes that the spirit of understanding that motivated and prevailed during the consultations of the Secretary-General and the approaches adopted in resolving the outstanding issues of Part XI of the Convention will provide a strong basis for an effective and mutually beneficial partnership among the community of nations. It is notable that this cooperation has been reflected in a field which is the common heritage of mankind. We are convinced that fair, equitable and

mutually beneficial cooperation among nations is the key to the development of a better future.

India is a registered pioneer investor under resolution II of 30 April 1982 and has been allotted a mine site in the Central Indian Ocean. We hope the setting up and functioning of organs and subsidiary bodies of the Authority will facilitate the development, acquisition and transfer of ocean-related technology, in particular deep seabed mining technology. We also hope that the provisions of the Convention and the Agreement relating to Implementation of Part XI will provide an opportunity for scientific and technological cooperation between developed and developing countries.

I would be remiss if I did not take this opportunity to place on record our sincere appreciation for the relentless efforts of the former Secretary-General, Mr. Javier Pérez de Cuéllar and by the present Secretary-General, Mr. Boutros Boutros-Ghali. Their determined efforts have contributed greatly to the final agreed outcome of an arduous endeavour.

In conclusion, I am happy to state that my delegation is a sponsor of the draft resolution circulated in document A/48/L.60. It will also be my privilege on 29 July 1994 to sign, on behalf of my Government, the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

Mr. Djalal (Indonesia): The delegation of Indonesia is particularly pleased to participate in the occasion of the adoption of the draft resolution and Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. The Convention, in our minds, constitutes a milestone in human endeavour, begun over two decades ago, to create a new legal order for the oceans. It is a product of lengthy sessions among some 150 nations during the Conference on the Law of the Sea and of the preparatory work extending over six years prior to 1973.

The Convention governs States' activities as well as their rights and obligations in the oceans. By its very nature, the Convention necessarily represents many compromises. Yet this innovative document not only establishes a legal regime for the seas and the oceans, facilitates international trade and communication, promotes the uses of the oceans for peaceful purposes, ensures an equitable utilization and conservation of resources, protects and preserves the marine environment and regulates the conduct of marine scientific research, but also takes into account the diverse interests of States, either coastal or land-locked, in the uses of the seas, whether for strategic, political or economic purposes.

The draft resolution and the Agreement now before us are in our minds a step in the right direction. They are the result of long and arduous negotiations over four years and reflect the continued commitment of Member States to the ideals and principles of universality embodied in the Convention. Today, we are at the threshold of the entry into force of the Convention later this year. The draft resolution and the Agreement have come right on time. They augur well for the future of mankind and for order in the oceans, enabling States to develop economically in a stable and peaceful legal and political order. Indeed, we are all aware of the problems of the oceans - either in their resources or their strategic values - which have grown at an alarming rate during the last several years. In this regard, in our view, the protection of the marine environment, the effective and balanced utilization and conservation of marine resources, the prevention of conflicts and the promotion of cooperation, the need of the developing countries to promote the well-being of their peoples, as well as the reservation of the uses of the seas for peaceful uses, among others, should remain high on the agenda of the international community.

As an archipelagic State, Indonesia attaches great importance to all matters pertaining to the law of the sea. It has demonstrated its support of the Convention by participating actively in the work of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea since its inception in 1983 to the present. Indonesia also ratified the Convention in 1985. Accordingly, it has enacted or is in the process of enacting new legislation and will be revising existing laws and regulations to ensure conformity with the provisions of the Convention. Indonesia also recognizes that in the Convention the rights of States go hand-in-hand with their responsibilities, especially with respect to the protection of the marine environment, the proper management of ocean resources, and the necessary protection of the rights of other countries in the archipelagic waters.

Indonesia has also been very supportive of regional cooperation in marine affairs through the Association of South-East Asian Nations (ASEAN) mechanism and other regional and international organizations to which it belongs. To assure good-neighbourly relations, we have

also concluded various maritime boundary agreements with our neighbours, although there is still much to be done in this respect. All this clearly reflects Indonesia's commitment to live in peace and cooperation with its neighbours.

Indonesia is also fully aware of the need to have the Convention universally accepted. We recognize the fact that none of the major industrialized countries has so far ratified the Convention. We are fully aware of the difficulties the developed industrial countries have had with regard to Part XI of the Convention and therefore welcome the willingness of the Group of 77 and the industrial countries to seek ways and means to overcome these difficulties. Indonesia therefore appreciates the efforts of the Secretary-General since 1990 to convene informal consultations in order to secure a more universal participation in the Convention. We have participated actively and constructively in the consultations since their inception and are happy that these efforts have produced the document before us today. The final results of the consultations also necessarily entailed compromises in view of the nature and the complexity of the problems. But we believe that they will enable the securing of universal participation in the Convention and will therefore be conducive to the development of a more acceptable legal order in the oceans.

Indonesia is a country consisting of thousands of islands and is surrounded by seas and oceans. At this moment, we are entering the second long-term 25-year - development plan. To meet our development objectives, it is essential for us not only to have domestic peace and stability, but also to have a peaceful, stable and cooperative environment with our neighbours. It is in this context that during our first 25-year plan we have worked very hard to achieve and to strengthen harmony, solidarity and cooperation with our partners in ASEAN. It is also in this context that Indonesia, together with our ASEAN partners, has worked endlessly to bring peace and stability, among others, to Indochina, particularly Cambodia, and to develop mutually beneficial relations with those countries in our region. We have also been working to develop and to realize the concept of a zone of peace, freedom and neutrality and a South-East Asian nuclear-weapon-free zone in our area, while at the same time promoting cooperation in the Asia- Pacific region as a whole through the Asia-Pacific Economic Cooperation, the ASEAN Regional Forum and, the ASEAN Ministerial Conference, among others.

Beyond South-East Asia, we have also taken an active role and interest in developing a framework for cooperation in fisheries management in the Pacific Ocean, particularly through the Pacific Economic Cooperation Conference Fisheries Task Force, by establishing the West Pacific Fisheries Consultative Committee (WPFCC), based in Manila, and the Trans-Pacific Fisheries Consultative Committee (TPFCC), based in Lima, Peru. Indonesia and other South-East Asian countries have been cooperating with the South Pacific countries in studies of tuna management within the WPFCC, while the South Pacific countries have been developing such cooperation with the Pacific Latin American countries through the TPFCC. Both the WPFCC and the TPFCC are also increasingly developing interlocking cooperation in fisheries studies and management. On the western side of Indonesia, we have also taken a keen interest in developing the Indian Ocean Marine Affairs Cooperation (IOMAC) with our neighbours in South Asia and East African countries. We have in fact ratified the Arusha Charter of IOMAC.

In 1990, since the conclusion of the Paris Treaty on Cambodia, we have also taken an active role and initiative in trying to manage potential conflicts in the South China Sea that could result from conflicting territorial claims over tiny islands and rocks in the area. Our objective is to promote cooperation in the South China Sea area within the context of implementing the 1982 United Nations Convention on the Law of the Sea, particularly within the context of the regime of closed and semi-enclosed seas. Our hope is that, by developing cooperation in various areas, the potential conflicts, with regard to territorial or jurisdictional claims, will be relatively easier to deal with or to shelve in favour of cooperation. Much has been done on this issue, particularly the issuance of the ASEAN Declaration on the South China Sea in 1992, which pledges the non-use of force in settling disputes, as well as the promotion of cooperation among the parties concerned. We believe that the 1982 United Nations Convention on the Law of the Sea provides a very good basis for the promotion of cooperation as well as for the prevention or avoidance of conflicts in the seas and oceans, including in the South China Sea area. We are looking forward to continuing and intensifying our efforts in this area together with the relevant States in the region.

On behalf of the Government of Indonesia, I welcome the draft resolution and the draft Agreement, with its annex. Indonesia is pleased to cosponsor the draft resolution and to sign the Agreement now before

us. We encourage other States to do the same, and we should make every effort to bring the Agreement into force as soon as possible by an overwhelming majority of States, thus broadening the participation of States in the Convention.

As current Chairman of the Group of 77 on the law of the sea, I have the distinct honour and pleasure to welcome the draft resolution and the Agreement, with its annex. The Group of 77 has also authorized me to state that it accepts and endorses the draft resolution and the Agreement. It encourages all States to participate actively in the adoption of the draft resolution and, whenever possible, to cosponsor those documents. Furthermore, it encourages all States to sign the Agreement as soon as possible within the time frame mentioned in the Agreement. Finally, the Group encourages all States to take immediate steps, as and if necessary, to ratify the Agreement and the Convention as soon as possible.

Finally, it is my sincere hope that the spirit of cooperation over the last 25 years that has inspired us to convene and to conclude the Third United Nations Conference on the Law of the Sea, to convene the Preparatory Commission to prepare for the establishment of the International Seabed Authority and the International Tribunal for the Law of the Sea, and to convene informal consultations under the auspices of the Secretary-General to achieve a more universal participation of States in the 1982 United Nations Convention on the Law of the Sea, will lead us to a speedy ratification of the Convention and the Agreement by the entire international community, thus providing us with a sound legal basis for the new order in the oceans.

Mr. Wlosowicz (Poland): The date 16 November 1994 will have a deeply historic character. It will mark, it is hoped, the beginning of a new, modern order on the seas, one that will have a real chance of achieving as universal a character as possible in the light of the Implementation Agreement relating to Part XI of the United Nations Convention on the Law of the Sea, which will be adopted during this session of the General Assembly.

There are many new or newly remodeled ideas contained in the Convention. It should suffice to recall some of these concepts: archipelagic States and archipelagic waters; transit passage; exclusive economic zone; the seabed area and its resources as the common heritage of mankind, to be governed by the International Seabed Authority; and the International Tribunal for the Law of the Sea.

Since 1968 - that is, since the first session of the seabed Committee - Poland has actively participated in the elaboration of the new law of the sea, which would be in conformity with scientific and technological progress and the new political and economic situation. However, it should be made clear that not all developments in the law of the sea suit Polish interests, a fact that my country has pointed out repeatedly. Poland, a geographically disadvantaged State, has nothing to gain and a lot to lose by the establishment and recognition of 200 miles of exclusive economic zones.

Mr. Martini Herrera (Guatemala), Vice-President, took the Chair.

Having said that, I would like to recall that the United Nations Convention on the Law of the Sea, as a result of a wide-ranging compromise, has required substantial sacrifices on the part of many States. However, notwithstanding our reservations and recognizing that the Convention was adopted as a package deal that constituted a compromise that satisfied no State entirely, Poland signed the Convention in 1982. Subsequently, Poland has contributed, and continues to contribute, to facilitating the future implementation of the Convention and actively participates in preparatory measures leading to the smooth entry into force of the Convention.

The requirement of conformity with the provisions of the Convention served as the basis for the drafting of a new Polish law concerning the country's maritime areas, which was adopted on 21 March 1991. During the legislative proceedings, the Codification Commission and the Parliament strictly adhered to the principle of observing the provisions of the Convention in enacting national legislation.

Poland generally welcomes the entire text of the draft resolution and draft Agreement relating to the Implementation of Part XI of the Convention, as contained in document A/48/L.60. The draft resolution and the Agreement, which are of very great legal and political value, are the fruit of the four-year consultations under the aegis of the Secretary-General on outstanding issues relating to the deep-seabed mining regime of the Convention.

Poland appreciates all the efforts of the Secretary-General, Mr. Boutros Boutros-Ghali, and of his predecessor, Mr. Pérez de Cuéllar; those of the Legal Counsels of the United Nations, Mr. Hans Corell and Mr. Carl-August Fleischhauer; and those of the officers of the Division for Ocean Affairs and the Law of the Sea in the Office of Legal Affairs in facilitating and conducting those consultations, which had the basic goal of achieving the universality of the Convention. All the States that participated in the consultations worked very hard in a spirit of cooperation and compromise and thus significantly contributed to the improvement of the new international legal maritime order.

Poland, however, is not fully satisfied with the provisions of the Agreement, particularly concerning the composition of the Council of the International Seabed Authority. These provisions are unfavourable for all countries of the Eastern European regional group. As a result of the future application of these provisions, the representation of the Eastern European region in the Council will be reduced from the three-seat minimum provided in the Convention to only two seats.

Poland is of the view that the Convention's provisions concerning the composition of the Council, which include references to the Eastern European group, were adopted by the Conference on the Law of the Sea as a well-balanced compromise and should be retained in their original form. The number of States in the Eastern European region has doubled since 1982, to 20. Some of these States are very much involved in activities in the seabed area as pioneer investors or as certifying States for pioneer investors. The number of certifying States or pioneer investors from the Eastern European region is the highest of all regional groups - five out of 20. As a certifying State for the Interoceanmetal and a registered pioneer investor, Poland has an immediate interest in the provisions of the Agreement.

Taking into account the informal political understanding reached on this issue during the last round of the consultations -to be read by you, Mr. President, at the time of the adoption of the draft resolution and the Agreement - Poland is of the view that this understanding only partly protects in political, not legal, terms the interests of the Eastern European States, including Poland, in future elections to the Council of the Authority. It should be clear that such protection does not constitute, in any way, legal protection, as was originally set out in the provisions of the Convention.

I should also like to raise the question of how long this understanding - after fulfilling its requirements concerning achievement of the appropriate balance between the membership of the Authority and that of the United Nations - will remain politically valid. For Poland, it is clear that the understanding is of unlimited duration.

The Agreement has been called "implementation Agreement", but in practical terms it will modify provisions of the Convention very seriously in some cases. That is why the Government of Poland is considering very carefully whether it should consent to be bound by the whole package - the Convention and the Agreement, which, according to paragraph 1 of article 2 of the Agreement, shall be interpreted and applied together as a single international instrument.

What should also be pointed out is the nature of the legal relationship between the Convention and the Agreement. According to paragraph 1 of article 2 of the Agreement, the Agreement will have primacy and priority over provisions of the Convention, because in the event of inconsistency the provisions of the Agreement shall prevail. This means, practically speaking, that the Agreement constitutes *lex posteriori*, which makes it possible to apply *lex priori* only if it is not in contradiction with the later law.

The international maritime order should be a single and universal order, because any other solution might simply impede legal security and stability and cause some legal and practical confusion.

The negotiation work is done, and now all States face the problem of taking at the most appropriate time the most appropriate decision about establishing their consent to be bound by the Agreement as well as its provisional application.

Poland is ready to vote in favour of the draft resolution contained in document A/48/L.60. However, its decision on the provisional application of the Agreement will be taken at a further later stage, after careful consideration of all its international and constitutional aspects.

Accordingly, Poland, at the appropriate time, will notify the Secretary-General of its final decision concerning such application.

Mr. Maruyama (Japan): At the outset I should like, on behalf of the Government of Japan, to express my sincere gratitude to His Excellency Mr. Samuel R. Insanally for convening this resumed forty-eighth session of the General Assembly for the purpose of adopting the important draft resolution relating to the law of the sea which is before us. I also wish to extend my appreciation to the Secretary-General, Mr. Boutros Boutros-Ghali, for his initiative and tireless efforts in conducting the informal consultations on outstanding issues with respect to the deep-seabed regime. My thanks go as well to the Under-Secretary-General for Legal Affairs and the Law of the Sea, Mr. Hans Corell, for conducting the consultations on behalf of the Secretary-General.

It is with a sense of deep satisfaction that my delegation, together with many other like-minded delegations, is able to be present at this important resumed session of the General Assembly to adopt the draft resolution, together with the draft Agreement, contained in document A/48/L.60, of which Japan is a cosponsor. This will make possible universal participation in the United Nations Convention on the Law of the Sea. It has been four years since the informal consultations were initiated by the then Secretary-General, Javier Pérez de Cuéllar. But, if we look back even further, it is very gratifying to note the progress we have made since Ambassador Pardo of Malta, at the twenty-second session of the General Assembly, in 1967, launched for the first time the concept of "a common heritage of mankind". After long and laborious negotiations, first in the Committee on the Peaceful Uses of the Seabed and the Ocean Floor, beginning in 1968, and then in the third United Nations Conference on the Law of the Sea, from 1973, we worked out a multilateral regime for the development of seabed resources, as embodied in Part XI and related annexes of the United Nations Convention on the Law of the Sea, which was adopted on 10 December 1982.

However, our expectations at that time for imminent seabed mining on a commercial basis proved to be over-optimistic. Various political and economic changes that subsequently occurred in the international environment, notably the end of the cold war, and a prevailing reliance on the market economy superseded the conditions that had shaped the seabed-mining regime in 1982. Above all, the continuing stagnation of the world metals market will delay the development of seabed mining - an inherently capital-intensive and risky venture - until after the turn of the century. Indeed, the Group of Experts established by the Preparatory Commission submitted a report concluding that commercial mining operations were not likely to commence before the year 2010. Most industrialized countries, while not having fundamental difficulties with other parts of the Convention, have not become States parties to it solely because they are dissatisfied with the economic principles behind the system of seabed-resources development. Soon after the adoption of the United Nations Convention on the Law of the Sea, it became generally recognized that if Part XI was left intact until the Convention's entry into force, the universal application of the Convention would be sorely jeopardized.

To break this impasse, in July 1990 former Secretary-General Pérez de Cuéllar undertook informal consultations aiming at enhancing the dialogue between industrialized and developing States on so-called hard-core issues, the issues in Part XI of particular concern to industrialized States. Those consultations were continued in 1992 by Mr. Boutros Boutros-Ghali. Throughout this process, representatives from industrialized as well as developing States have made steadfast efforts, in a constructive spirit and demonstrating mutual understanding, to overcome what had seemed at the time insurmountable difficulties over these hard-core issues. The four years of negotiations, in which Japan, together with other like-minded countries, has actively participated, are now culminating in the adoption of this draft resolution and Agreement. This is truly a magnificent achievement, of which we can all be proud. Japan is deeply appreciative of the contributions of both the former and the present Secretaries-General in leading the consultations to a successful conclusion.

It may well be said that the adoption of the Agreement will be of historic significance for two reasons.

First, the Agreement finally puts a period to the 27-year pursuit by the international community of a comprehensive framework of international law for deep-seabed mining since Ambassador Pardo's historic address in 1967. It is the firm belief of my delegation that Part XI of the Convention as amended by this Agreement provides for a reasonable and viable regime in which the majority of deep-seabed mining States can encourage their commercial entities to continue their deep-seabed mining activities. The structure of various organs and subsidiary bodies to be established under the regime will be streamlined, according to their foreseeable needs and the principle of cost-effectiveness. The excessive regulations and financial burdens placed on commercial entities and sponsoring States have been significantly

reduced, thereby improving dramatically the investment climate for commercial entities to pursue mining activities in the future.

In that connection, my delegation particularly welcomes the waiver, as introduced in the draft Agreement, of the $1 million annual fee prior to the commencement of commercial production, since returns on initial investments are not expected to accrue from commercial production for a number of years, even after commercial production has started. This waiver, together with other reduced regulations, will surely reinvigorate the deep-seabed mining entities of industrialized countries, including Japan, and enable them to realize the concept of the common heritage of mankind as early as possible.

Secondly, the draft Agreement is all the more significant in that it will pave the way for industrialized countries to accept and adhere to the Convention in its entirety, thus promoting universal participation. This is essential for establishing a stable order in the use of the oceans and for ensuring that the law of the sea applies to the international community as a whole. In particular, once it is universally accepted, the Convention can be expected to bring an end to the legal disputes that resulted from the unilateral extension of jurisdiction by certain States when the future of the Convention was unclear, and to provide instead an integrated legal basis for the use of the sea by the international community as a whole.

Throughout the past 11 years, Japan - not only as a signatory of the Convention but also as a certifying State of a registered pioneer investor - has participated actively and has sought to make contributions to the advancement of the important work of the Preparatory Commission. We hope that during its twelfth session, which will be convened immediately following this resumed General Assembly session, the Commission will fully discharge the mandate which resolution II has entrusted to it, so that the Authority and the Tribunal can commence functioning smoothly upon the entry into force of the Convention.

As a maritime State with a major interest in the stability of the legal order of the sea, Japan will wholeheartedly welcome the adoption of the draft Agreement, which will make possible universal participation in the United Nations Convention on the Law of the Sea. I am glad to announce here that Japan intends to vote in favour of the adoption of the draft Agreement, and to sign it at the end of this session, subject to ratification. Japan is also prepared to give its consent to the provisional application of this Agreement from the date when the United Nations Convention on the Law of the Sea enters into force, so that it can participate in the International Seabed Authority from the very outset. Such consent will be subsequently conveyed to the Secretary-General upon completion of the necessary domestic procedures before the Convention enters into force.

Japan will certainly accelerate the necessary preparatory work, such as amending existing laws and regulations or enacting new legislation in order to comply with the provisions of the Convention, with a view to seeking ratification of the Convention together with the draft Agreement as early as possible. We recognize that, since the Convention covers a wide range of issues relating to the law of the sea, such work may require a tremendous amount of time and labour, involving many governmental departments.

In concluding, I should like to make it clear that Japan, as a maritime State, will continue to make every possible effort within the newly established Authority to contribute to achieving the global objective of realizing the concept of the common heritage of mankind, and to ensuring a stable legal order, in accordance with the United Nations Convention on the Law of the Sea.

Mr. Lamamra (Algeria) *(interpretation from French):* The United Nations Convention on the Law of the Sea, one of the greatest achievements of the United Nations in the codification and development of international law and the promotion of international cooperation, will enter into force on 16 November 1994. The 1982 Convention, rightly described as an oceanic constitution, governs the law of the sea in all aspects, from the delimitation of maritime spaces to the settlement of disputes, plus economic and commercial activities, the conservation of biological resources, the protection and preservation of the environment, technical cooperation and scientific research.

That comprehensive approach, based on the conviction that all problems relating to the seas are interlinked, makes the 1982 Convention unique - the more so given the broad support it enjoyed from the outset. The many signatories of the Convention on the day it was opened for signature -119, including Algeria - have increased in number to 159, which attests to the uniqueness of the Convention and to the high degree of consensus it commands.

Indeed, consensus was the main methodological principle of all the work of the Third United Nations Conference on the Law of the Sea, including all phases of negotiation of the text that became the Convention on the Law of the Sea. Despite this constant concern for compromise, in the end it proved impossible to adopt the Convention by consensus. That lack of general agreement sowed the seeds for what 12 years later gave rise to the modification of certain provisions of Part XI of the Convention even before it entered into force.

As it participates in today's consideration of the report of the Secretary-General (A/48/950) on the results of consultations on outstanding issues relating to the deep-seabed provisions of the Convention on the Law of the Sea, the Algerian delegation wishes to set out its position on this matter, which can be summed up in five points:

First, everyone is aware that those consultations, whose purpose was to promote what has come to be called universal participation in the Convention, were actually meant to address the concerns of certain States with respect to the deep-seabed mining regime; they resulted in the draft Agreement relating to the Implementation of Part XI of the Convention. It should be noted that, at times, some provisions of the draft Agreement go well beyond mere implementation of certain provisions of Part XI of the Convention, and often introduce substantive modifications of the original text. Yet realism led my delegation to agree with the terms of the draft Agreement, which in the circumstances are the only possible basis for promoting universal acceptance of the Convention, in particular by the world's largest maritime Powers.

Secondly, the draft Agreement relating to the so-called implementation of Part XI of the Convention, now before the Assembly for adoption, in conformity with the explicit provisions of paragraph 4 of draft resolution A/48/L.60 and of article 2 (1) of the draft Agreement contained therein, must be interpreted and applied "together with Part XI as a single instrument" *(A/48/L.60, para. 4)*. This means that in the event of problems of application or interpretation the provisions of the draft Agreement must be applied and interpreted in the light of the spirit and the letter of the Convention itself.

Thirdly, the unified nature of the draft Agreement and the Convention, which together constitute a single integrated instrument, makes it impossible for any State or entity to agree to be bound by the draft Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention, including the provisions of its Part XI. This is explicit in the draft resolution and in the draft Agreement. We trust that the Secretariat, specifically the Office of Legal Affairs, has devised practical arrangements for putting this commitment into effect.

Fourthly, with respect to what are known as substantive questions, the results of the consultations, as reflected in the annexes of the report of the Secretary-General and of the draft Agreement, formalize the acceptance and confirmation by the participants in those consultations of the establishment, as envisioned in the Convention, of the following bodies: the International Seabed Authority to organize and control mining activities in the Area, that is the seabed and the subsoil thereof beyond the limits of national jurisdiction, which are considered to be the common heritage of mankind; the Assembly of that Authority, as its highest organ, to which all other organs of the Authority are responsible in keeping with their respective prerogatives; the Council, the Authority's executive organ, its functions and composition to conform with the provisions of the Convention, apart from the decision-making process, which will henceforth involve the rule of unanimity for the benefit of each of the groups of States described in section 3, paragraph 15 of the annex to the draft Agreement, where the group of developing States will constitute a single chamber for the purposes of voting in the Council; and the Enterprise as the Authority's commercial organ, whose activities will gradually evolve, ultimately, when the commercial goals have been met, to reach the stage of operations to exploit the resources of the seabed.

And fifthly, the draft Agreement sets out an original procedure for participation in the Authority as members on a provisional basis. It is the understanding of my delegation that this status as provisional member of the Authority, which involves the same rights and obligations, including that of contributing to the Authority's budget, can be justified only in terms of managing the time period necessary for becoming a full party to the draft Agreement and the Convention. None the less, this provisional status must not be unreasonably lengthy lest it test the State's good will - and even its willingness to become a party to the draft Agreement and the Convention.

Among the questions not resolved in the draft implementation Agreement relates to the composition of the Council of the International Seabed Authority, or more precisely to the allocation of its 36 seats in

conformity with the criteria set out in article 161 of the Convention, including the principle of equitable geographical distribution. My delegation is convinced that this question will be resolved fairly through consultations among the regional groups concerned. In that context, the unofficial agreement annexed to the report of the Secretary-General constitutes a provisional understanding that will have its full effect when the number of members from each regional group participating in the Authority is basically equal to the number of members of the corresponding group in the United Nations.

In the light of those ideas, the Algerian delegation is pleased to associate itself with other delegations that intend to vote in favour of draft resolution A/48/L.60 and to sign the draft Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 when it is opened for signature. We shall thus be contributing to the achievement of one of the noblest goals the United Nations has ever set itself: the establishment of a new legal order governing the seas and oceans, one of whose founding principles remains the concept of the common heritage of mankind.

The meeting rose at 6.15 p.m.